

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF

POWEREX CORP.

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)
)

DOCKET NO. EA-171-B

APPLICATION OF POWEREX CORP.
FOR RENEWAL OF AUTHORIZATION TO
TRANSMIT ELECTRIC ENERGY TO CANADA

Powerex Corp. ("Powerex"), pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e), and Subpart W of Part 205 of the regulations thereunder, 10 C.F.R. § 205.300, *et seq.*, hereby files its Application for Renewal of Authorization to export electricity from the United States to Canada. In support of this Application, Powerex respectfully states as follows:

I.
INTRODUCTION

In Order No. EA-171, FE Docket No. EA-171, issued February 25, 1998, the United States Department of Energy, Office of Fossil Energy ("DOE") authorized Powerex to export electric energy to Canada for a period of two (2) years. In Order No. EA-171-A, FE Docket No. EA-171-A, issued February 23, 2000 ("February 23 Order"), DOE granted Powerex an extension of this authorization and added the international transmission lines owned by Long Sault, Inc. to the list of authorized export points. The February 23 Order stipulated that the authorization would be effective on February 25, 2000, and continue in effect for a period of five (5) years from that date.¹ The February 23 Order further stated

¹ *British Columbia Power Exchange Corp.*, Order No. EA-171-A at Ordering Paragraph (L) (February 23, 2000). By letter dated October 4, 2000, Powerex requested DOE to amend Order No. EA-171-A to reflect its name change to Powerex Corp.

that Powerex could reapply for renewal within six months prior to the February 25, 2005 expiration of such authorization.² Accordingly, Powerex requests herein that it be authorized to export electricity from the United States to Canada for additional five (5) year period that would end February 25, 2010.

II. DESCRIPTION OF POWEREX

The exact legal name of Powerex is Powerex Corp. Powerex is a corporation organized under the Company Act of British Columbia, with its principal place of business at 666 Burrard Street, 14th Floor, Vancouver, British Columbia, Canada V6C 2X8. Powerex is a wholly-owned subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia. BC Hydro is one of the largest electric utilities in Canada, serving more than 1.6 million customers in an area containing over 94 percent of British Columbia's population.

Powerex acquires and markets power from a portfolio of resources, including the Canadian Entitlement resources made available under the Columbia River Treaty, energy and capacity made available for export from the BC Hydro system and various other power resources acquired from other sellers within the United States, Mexico and Canada.³

² *Id.*

³ Sales at wholesale to U.S. customers are pursuant to power marketing authorization from the Federal Energy Regulatory Commission ("FERC"). See *British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Docket No. ER97-4024-012 (issued Sept. 12, 2000); *Powerex Corp.*, Docket No. ER01-48-002 (issued Oct. 30, 2003); *Powerex Corp.*, Docket No. ER04-466-000 (issued Feb. 11, 2004); *Powerex Corp.*, Docket No. ER01-48-003 (issued March 29, 2004). Powerex originally was known as the British Columbia Power Exchange Corporation. This name was changed to Powerex Corp. on September 6, 2000. Effective as of that date, FERC accepted for filing in Docket Nos. ER01-48-000 and ER01-48-001 Powerex's application to succeed to British Columbia Power Exchange Corporation's market-based Rate Schedule FERC No. 1 and First Revised Rate Schedule FERC No. 2. Powerex may make sales at retail to U.S. industrial customers at U.S. points of delivery pursuant to individual state regulatory authorizations.

Powerex exports power from the United States to the BC Hydro system to enable BC Hydro to replenish its hydropower resources. Powerex also exports power for sale in Canadian provinces outside British Columbia. Additionally, Powerex administers the Canadian Entitlement to energy and capacity under the Columbia River Treaty between the United States and Canada, including making transmission arrangements for return of the Canadian Entitlement to British Columbia.

The BC Transmission Corporation ("BCTC") is a Crown Corporation, legally separate from BC Hydro and Powerex, which is responsible for operating and maintaining the transmission system owned by BC Hydro. BCTC provides open and non-discriminatory access to the transmission system for all third parties.⁴ It operates in a competitive environment, and is subject to laws that ensure free and fair competition.

As the owner of the transmission assets, BC Hydro submitted an application to the British Columbia Utilities Commission ("BCUC") on September 22, 2004, as supplemented on November 19, 2004, so that it can continue to be in compliance with the Standards of Conduct ("SOC") applicable to maintaining non-discriminatory access to the transmission system that were approved by its regulator, the BCUC, in the late 1990s. BCUC action on the application is pending.

As operator of the transmission assets, BCTC submitted its SOC for approval by the BCUC on September 22, 2004. This application was supplemented on November 19, 2004. BCUC action on the application is pending.

⁴ BC Hydro has a Wholesale Transmission Service ("WTS") Tariff in place based on FERC's Order No. 888 *Pro Forma* Tariff. This tariff gives U.S. transmission providers and market participants non-discriminatory, open access to BC Hydro's transmission facilities for transmission into, out of and across British Columbia. BCTC has applied to the BCUC for an Open Access Transmission Tariff ("OATT"). Upon BCUC approval, BCTC's OATT will replace BC Hydro's WTS Tariff.

III. **COMMUNICATIONS**

Communications regarding this application should be addressed to the following:

Mr. Mike MacDougall
Manager, Trade Policy
Powerex Corp.
666 Burrard Street, Suite 1400
Vancouver, British Columbia
Canada V6C 2X8
Phone: (604) 891-5000
Fax: (604) 895-7012
Mike.MacDougall@Powerex.com

Paul W. Fox, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Phone: (512) 494-3622
Fax: (512) 479-3922
Paul.Fox@Bracepatt.com

Tracey L. Bradley
Energy Regulatory Consultant
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W., Suite 500
Washington, D.C. 20006
Phone: (202) 828-5848
Fax: (202) 857-2133
Tracey.Bradley@Bracepatt.com

IV. **JURISDICTION**

The authority requested of DOE by Powerex is a necessary condition for exporting under Section 202(e) of the FPA. There are no necessary Canadian authorizations to effect the proposed import to Canada.

V. **RENEWAL AUTHORIZATION AND TECHNICAL DISCUSSION**

By this Application, Powerex seeks authorization to continue until February 25, 2010 to effect the transmission and export of electric power, on either a firm or interruptible basis, to Canada. Powerex desires to continue its exports of electrical energy acquired from U.S. and Mexican generating sources through the existing facilities along the U.S./Canada border, which are located as set forth on Attachment 1, hereto. The Presidential Permits

under which the relevant border facilities were constructed and maintained, and details related thereto, are also set forth on Attachment 1, hereto.

Exports authorized herein shall not cause a violation of the terms and conditions contained in the existing export authorizations associated with the international transmission facilities identified in Attachment 1. Specifically, exports made by Powerex will not cause total exports on the facilities authorized in the Presidential Permits to exceed the authorized instantaneous transmission rate.

As described in its initial export Application, Powerex has no "system" of its own on which its exports of power could have a reliability or stability impact. The electric power that Powerex will export, on either a firm or interruptible basis, will be surplus to the system of the generator from whom such power will be purchased. Powerex will purchase the power to be exported to Canada from other power marketers, from independent power producers, from other Canadian utilities, from Mexican sources, or from U.S. electric utilities and federal power marketing agencies as those terms are defined in Sections 3 (22) and 3 (19) of the FPA.

VI. **PUBLIC INTEREST**

Powerex respectfully submits that granting its renewal Application to export electric power is in the public interest. The requested export of electric energy to Canada will not impair the sufficiency of electric power supply within the United States, nor will it impede or tend to impede the coordinated use of regional transmission systems. Powerex will be obtaining transmission service for exports to Canada from U.S. transmission providers that are subject to or operate pursuant to FERC's open access transmission policies as prescribed in Order No. 888. Further, Powerex will schedule its exports in compliance with all applicable reliability criteria, standards and guides as are applied by the North American

Reliability Council and regional councils. Powerex will also separately obtain all necessary authorizations, both regulatory and contractual, to wheel power over transmission facilities for the delivery to the Canadian border. Powerex shall submit to DOE the reports required by marketers possessing export authorization. Accordingly, the authorization requested herein can be granted with full assurance that there will be no adverse impact on the public interest.

VII. CONSISTENCY WITH LAWS

Authorization of the exports proposed by Powerex is consistent with NAFTA and U.S. energy policy, and will foster development of a more efficient and competitive North American energy market. Powerex will conduct all operations pursuant to this Authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder.

Powerex believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Application, and that DOE's approval of this Application is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE regulations implementing the National Environmental Policy Act of 1969.

VIII. EXHIBITS

The following Exhibits are attached hereto:

- | | | |
|------------------|---|-------------------------------------|
| <u>Exhibit A</u> | - | Agreements
(Not applicable) |
| <u>Exhibit B</u> | - | Legal Opinion of Powerex's counsel. |
| <u>Exhibit C</u> | - | Maps
(Not applicable) |
| <u>Exhibit D</u> | - | Power of Attorney. |

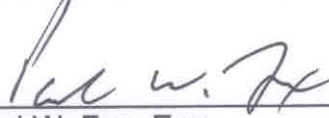
- Exhibit E - Statement of any Corporate Relationship or Existing Contract which in any way Related to Control or Fixing of Electric Power
(Not applicable)
- Exhibit F - Operating Procedures Regarding Available Capacity and Energy
(Not applicable)

Powerex has also attached as Exhibit G a form of Notice suitable for publication in the *Federal Register*.

IX.
CONCLUSION

WHEREFORE, Powerex requests that DOE grant this Application as requested herein. Powerex is willing to provide any additional information DOE may require to expedite review and approval of this renewal Application.

Respectfully submitted,



Paul W. Fox, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
111 Congress Avenue, Suite 2300
Austin, Texas 78701

Attorney for
POWEREX CORP.

January 6, 2005

ATTACHMENT 1

March 8, 2004

U.S. DEPARTMENT OF ENERGY
International Transmission Facilities
At the U.S. Border with Canada
Authorized for Use by Third-Party Transmitters

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
Basin Electric	Tioga, ND	230-kV	PP-64
Boise Cascade	International Falls, MN	115 kV	PP-96
	International Falls, MN	6.6-kV	PP-39
Bonneville Power Administration	Blaine, WA	2-500 kV	PP-10
	Nelway, WA	230-kV	PP-36
	Nelway, WA	230-kV	PP-46
Eastern Maine Electric Coop.	Calais, ME	69-kV	PP-32
International Transmission Co.	St. Clair, MI	345-kV	PP-230
	Marysville, MI	230-kV	PP-230
	Detroit, MI	230-kV	PP-230
	St. Clair, MI	345-kV	PP-230
Joint Owners of Highgate Project	Franklin, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Co.	Houlton, ME	345-kV	PP-43
Maine Public Service Co.	Limestone, ME	69-kV	PP-12
	Fort Fairfield, ME	69-kV	PP-12
	Aroostock County, ME	138-kV	PP-29
	Madawaska, ME	2-69-kV	PP-29
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Coop, Inc.	Roseau County, MN	230-kV	PP-61

New York Power Authority	Ft. Covington, NY Massena, NY Niagara Falls, NY Devils Hole, NY	765-kV 2-230-kV 2-345-kV 230-kV	PP-56 PP-25 PP-74 PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Co.	Red River, ND Roseau County, MN	230-kV 500-kV	PP-45 PP-63
Northern States/Xcel	Rugby, ND	230-kV(Not built)	PP-231
Vermont Electric Coop. Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	\pm 450-kV DC	PP-76

EXHIBIT A

(Not Applicable)

EXHIBIT B

Opinion of Counsel

LEGAL OPINION

The following opinion is given in support of the Application of Powerex for Renewal of Authorization to Transmit Electric Energy to Canada, dated January 6, 2005.

- (1) I am an attorney at law, authorized to practice law in the Province of British Columbia;
- (2) I am employed as Legal Counsel for Powerex.
- (3) Powerex, is duly incorporated, validly existing and in good standing under the laws of the Business Corporations Act of British Columbia and I believe will take those actions required for it to do business authorized in the States in which it will operate; and
- (4) Powerex has full corporate power and authority to buy, sell or act as a marketer in the sale and exportation of electric energy as requested in the Application.

Sincerely yours,

A handwritten signature in cursive script that reads "Lisa Wagner".

LISA G. WAGNER
Barrister & Solicitor
Powerex
SUITE 1400 - 666 BURNARD STREET
VANCOUVER, B.C.
V6C 2X8

EXHIBIT C

(Not Applicable)

EXHIBIT D

Power of Attorney

**IRREVOCABLE LIMITED
POWER OF ATTORNEY**

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made January 6, 2005 by Powerex Corp. (the "Principal"), a corporation organized and existing under the Company Act of British Columbia, with its headquarters at 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8.

1. Appointment. The Principal does hereby appoint Mr. Paul W. Fox, whose principle place of business is at Bracewell & Patterson, L.L.P., 111 Congress Avenue, Suite 2300, Austin, Texas 78701, as the Principal's true and lawful agent and attorney-in-fact ("Attorney-in-Fact") for the limited purpose hereinafter set out.
2. Scope of Authority. The Attorney-in-Fact shall have the limited power and authority to receive service of process for any and all matters relating to Principal's reporting requirements to the Department of Energy pursuant to Principal's Authority to Transmit Electric Energy to Canada and to Mexico.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal.

IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be duly executed on this 6th day of January 2005.

Powerex Corp.

By: 

Name: Doug Little

Title: Vice President, Marketing and Trade Policy

This instrument was acknowledged before me on the 6th day of January, 2005 by Doug Little at Vancouver, B.C.

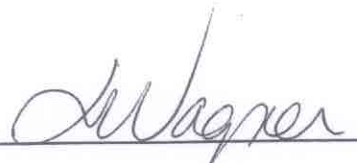


EXHIBIT E

(Not Applicable)

EXHIBIT F

(Not Applicable)

EXHIBIT G
(Form of Notice)

DEPARTMENT OF ENERGY

[Docket No. EA-171-B]

Application To Export Electric Energy; Powerex Corp.

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of Application

SUMMARY: Powerex Corp. (Powerex), a corporation organized and existing under the Company Act of British Columbia, has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to Section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January __, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Michael Skinner (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA-171 authorizing Powerex to transmit electric energy from the United States to Canada as a power marketer for a two-year period. On February 23, 2000, FE issued Order No. EA-171-A renewing this authorization for a five-year term. That five-year authorization will expire on February 25, 2005.

On January 7, 2005, FE received an application from Powerex to renew its authorization to transmit electric energy from the United States to Canada for a five-year term. Powerex proposes to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Boise Cascade, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Co., Northern States/Xcel, Vermont Electric Cooperative Company, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Powerex, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

PROCEDURAL MATTERS: Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with " 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Powerex application to export to Canada should be clearly marked with Docket EA-171-B. Additional copies are to be filed directly with: Paul W. Fox; Bracewell and Patterson, L.L.P., 111 Congress Avenue, Suite 2300, Austin, TX 78746, Fax: (512) 479-3922; Tracey L. Bradley, Bracewell & Patterson, L.L.P., 2000 K Street, N.W., Suite 500, Washington, D.C. 20006, Fax: (202) 857-2133; and Mike MacDougall, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada, V6C 2X8, Fax: (604) 895-7012 .

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA-171. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-171-B proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home Page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

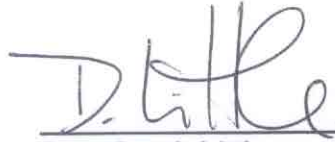
Issued in Washington, DC, on January __, 2005.

Anthony J. Como,
Deputy Director, Electric Power Regulation, Office of Fossil Energy.
Billing Code _____

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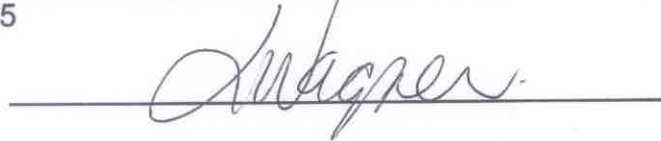
VERIFICATION

I, Douglas John Little, having knowledge of the matters set forth in the above Application of Powerex for Renewal of Authorization to Transmit Electric Power to Canada, hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.



Douglas J. Little
Vice President, Marketing and Trade Policy

SUBSCRIBED AND SWORN before me, a notary public in the Province of British Columbia this 6th day of January, 2005



My Commission Expires: does not expire

LISA G. WAGNER

Barrister & Solicitor

Powerex

SUITE 1400 - 666 BURNARD STREET
VANCOUVER, B.C.
V6C 2X8